

4-3-1. Definitions.

As used in this chapter:

(1) "Adulterated" means any dairy product that:

(a) contains any poisonous or deleterious substance that may render it injurious to health;

(b) has been produced, prepared, packaged, or held:

(i) under unsanitary conditions;

(ii) where it may have become contaminated; or

(iii) where it may have become diseased or injurious to health;

(c) contains any food additive that is unsafe within the meaning of 21 U.S.C.

Sec. 348;

(d) contains:

(i) any filthy, putrid, or decomposed substance;

(ii) fresh fluid milk with a lactic acid level at or above .0018; or

(iii) cream with a lactic acid level at or above .008 or that is otherwise unfit for human food;

(e) is the product of:

(i) a diseased animal;

(ii) an animal that died otherwise than by slaughter; or

(iii) an animal fed upon uncooked offal;

(f) has intentionally been subjected to radiation, unless the use of the radiation is in conformity with a rule or exemption promulgated by the department; or

(g) (i) has any valuable constituent omitted or abstracted;

(ii) has any substance substituted in whole or in part;

(iii) has damage or inferiority concealed in any manner; or

(iv) has any substance added, mixed, or packed with the product to:

(A) increase its bulk or weight;

(B) reduce its quality or strength; or

(C) make it appear better or of greater value.

(2) "Cow-share program" means a program in which a person acquires an undivided interest in a milk producing hoofed mammal through an agreement with a producer that includes:

(a) a bill of sale for an interest in the mammal;

(b) a boarding arrangement under which the person boards the mammal with the producer for the care and milking of the mammal; and

(c) an arrangement under which the person receives raw milk for personal consumption.

(3) "Dairy product" means any product derived from raw or pasteurized milk.

(4) "Distributor" means any person who distributes a dairy product.

(5) (a) "Filled milk" means any milk, cream, or skimmed milk, whether condensed, evaporated, concentrated, powdered, dried, or desiccated, that has fat or oil other than milk fat added, blended, or compounded with it so that the resultant product is an imitation or semblance of milk, cream, or skimmed milk.

(b) "Filled milk" does not include any distinctive proprietary food compound:

(i) that is prepared and designated for feeding infants and young children, which is customarily used upon the order of a licensed physician;

- (ii) whose product name and label does not contain the word "milk"; and
- (iii) whose label conforms with the food labeling requirements.
- (6) "Frozen dairy products" mean dairy products normally served to the consumer in a frozen or semifrozen state.
- (7) "Grade A milk," "grade A milk products," and "milk" have the same meaning that is accorded the terms in the federal standards for grade A milk and grade A milk products unless modified by rules of the department.
- (8) "License" means a document allowing a person or plant to process, manufacture, supply, test, haul, or pasteurize milk or milk products or conduct other activity specified by the license.
- (9) "Manufacturer" means any person who processes milk in a way that changes the milk's character.
- (10) "Manufacturing milk" means milk used in the production of non-grade A dairy products.
- (11) "Misbranded" means:
 - (a) any dairy product whose label is false or misleading in any particular, or whose label or package fails to conform to any federal regulation adopted by the department that pertains to packaging and labeling;
 - (b) any dairy product in final packaged form manufactured in this state that does not bear:
 - (i) the manufacturer's, packer's, or distributor's name, address, and plant number, if applicable;
 - (ii) a clear statement of the product's common or usual name, quantity, and ingredients, if applicable; and
 - (iii) any other information required by rule of the department;
 - (c) any butter in consumer package form that is not at least B grade, or that does not meet the grade claimed on the package, measured by U.S.D.A. butter grade standards;
 - (d) any imitation butter made in whole or in part from material other than wholesome milk or cream, except clearly labeled "margarine";
 - (e) renovated butter unless the words "renovated butter," in letters not less than 1/2-inch in height appear on each package, roll, square, or container of such butter; or
 - (f) any dairy product in final packaged form that makes nutritional claims or adds or adjusts nutrients that are not so labeled.
- (12) "Pasteurization" means any process that renders dairy products practically free of disease organisms and is accepted by federal standards.
- (13) "Permit or certificate" means a document allowing a person to market milk.
- (14) "Plant" means any facility where milk is processed or manufactured.
- (15) "Processor" means any person who subjects milk to a process.
- (16) "Producer" means a person who owns a cow or other milk producing hoofed mammal that produces milk for consumption by persons other than the producer's family, employees, or nonpaying guests.
- (17) "Raw milk" means unpasteurized milk.
- (18) "Renovated butter" means butter that is reduced to a liquid state by melting and drawing off such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product of milk.

(19) "Retailer" means any person who sells or distributes dairy products directly to the consumer.

Amended by Chapter 165, 2007 General Session

Amended by Chapter 179, 2007 General Session

4-3-2. Authority to make and enforce rules.

The department is authorized and directed, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as may in its judgment and discretion be necessary to carry out the purposes of this chapter.

Amended by Chapter 382, 2008 General Session

4-3-3. Authority in local jurisdictions to regulate dairy products -- Department standards to govern -- Department evaluation permitted -- Local notice to cease inspection.

While nothing in this chapter shall impair the authority of any town, city, or county to regulate the production, handling, storage, distribution, or sale of dairy products, frozen dairy products, grade A milk, grade A milk products, or milk, within their respective jurisdictions, a common standard as prescribed by the department shall be followed in such jurisdictions.

If a town, city, or county elects to enforce this chapter, the department shall accept its findings relative to inspections in lieu of making its own inspections, but the department may evaluate the effectiveness of any local inspection program. If a town, city, or county intends to cease making inspections under this chapter, it shall notify the department of its intent to cease inspection at least one year in advance of the actual cessation of inspection.

Upon request, the commissioner shall cooperate with other state agencies, towns, cities, counties, and federal authorities in the administration and enforcement of this chapter.

Enacted by Chapter 2, 1979 General Session

4-3-4. Authority to inspect premises.

(1) The department may inspect any premises where dairy products are produced, manufactured, processed, stored, or held for distribution, at reasonable times and places, to determine whether the premises are in compliance with this chapter and the rules adopted according to it.

(2) If the department is denied access, it may proceed immediately to the nearest court of competent jurisdiction to seek an ex parte warrant or its equivalent to permit inspection of the premises.

Amended by Chapter 179, 2007 General Session

4-3-5. Authority to collect samples -- Receipt -- Names of distributors.

(1) Samples of dairy products from each dairy farm or processing plant may be

secured and examined as often as deemed necessary by the department.

(2) Samples of dairy products from stores, cafes, soda fountains, restaurants, and other places where dairy products are sold may be secured and examined as often as deemed necessary by the department.

(3) Samples of milk or dairy products may be taken by the department at any time before final delivery to the consumer.

(4) The department shall provide a signed receipt for all samples taken showing the date of sampling and the amount and kind of sample taken; provided, that the department is not liable to any person for the cost of any sample taken.

(5) All proprietors of stores, cafes, restaurants, soda fountains, and other similar places shall furnish the department, upon request, with the names of all distributors from whom dairy products are obtained.

Enacted by Chapter 2, 1979 General Session

4-3-6. Condemnation, embargo, denaturization of unfit milk or dairy products -- Unfit equipment.

(1) The department may condemn or embargo any milk or dairy product which is adulterated, misbranded, or not produced or processed in accordance with this chapter.

(2) The department may condemn the use of any equipment, tank, or container used to produce, process, manufacture, or transport milk or dairy products that it finds, upon inspection, to be unclean or contaminated.

(3) The department may mark or tag any condemned equipment, tank, or container with the words "this (equipment, tank, or container) is unfit to contain human food."

(4) Condemned milk shall be decharacterized or denatured with harmless coloring or rennet by the department.

Enacted by Chapter 2, 1979 General Session

4-3-7. Testing and measuring milk -- Standards prescribed -- Milk quality work in accordance with rules.

(1) Milk shall be tested and measured in accordance with:

- (a) the latest edition of "Association of Official Analytical Chemists";
- (b) the latest edition of "Standard Methods for Examination of Dairy Products";
- (c) other publications accepted by the department; or
- (d) methods prescribed by the department.

(2) A processor or manufacturer shall perform quality work in accordance with the rules adopted by the department.

Amended by Chapter 179, 2007 General Session

4-3-8. Licenses and permits -- Application -- Fee -- Expiration -- Renewal.

(1) Application for a license to operate a plant, manufacture butter or cheese, pasteurize milk, test milk for payment, haul milk in bulk, or for the wholesale distribution of dairy products shall be made to the department upon forms prescribed and furnished

by it.

(2) Upon receipt of a proper application, compliance with all applicable rules, and payment of a license fee determined by the department according to Subsection 4-2-2(2), the commissioner, if satisfied that the public convenience and necessity and the industry will be served, shall issue an appropriate license to the applicant subject to suspension or revocation for cause.

(3) Each license issued under this section expires at midnight on December 31 of each year.

(4) A license to operate a plant, manufacture butter or cheese, pasteurize milk, test milk for payment, haul milk in bulk, or for the wholesale distribution of dairy products, is renewable for a period of one year upon the payment of an annual license renewal fee determined by the department according to Subsection 4-2-2(2) on or before December 31 of each year.

(5) Application for a permit or certificate to produce milk shall be made to the department on forms prescribed and furnished by it.

(6) (a) Upon receipt of a proper application and compliance with all applicable rules, the commissioner shall issue a permit entitling the applicant to engage in the business of producer, subject to suspension or revocation for cause.

(b) No fee may be charged by the department for issuance of a permit or certificate.

Amended by Chapter 179, 2007 General Session

4-3-9. Licenses, permits, and certificates -- Suspension or revocation -- Grounds.

(1) The department may revoke or suspend the license, permit, or certification of any person who violates this chapter or any rule enacted under the authority of this chapter.

(2) All or part of any license, permit, or certification may be suspended immediately if an emergency exists that presents a clear and present danger to the public health, or if inspection or sampling is refused.

Amended by Chapter 161, 1987 General Session

4-3-10. Unlawful acts specified.

It is unlawful for any person in this state to:

(1) operate a plant without a license issued by the department;

(2) market milk without a permit or certificate issued by the department;

(3) manufacture butter or cheese, pasteurize milk, test milk for payment, or haul milk in bulk without a special license to perform the particular activity designated in this Subsection (3); unless if more than one person working in a plant is engaged in the performance of a single activity designated in this Subsection (3), the person who directs the activity is licensed;

(4) manufacture, distribute, sell, deliver, hold, store, or offer for sale any adulterated or misbranded dairy product;

(5) manufacture, distribute, sell, deliver, hold, store, or offer for sale any dairy

product without a license, permit, or certificate required by this chapter;

(6) sell or offer for sale any milk not intended for human consumption unless it is denatured or decharacterized in accordance with the rules of the department;

(7) manufacture, distribute, sell, or offer for sale any filled milk labeled as milk or as a dairy product;

(8) keep any animals with brucellosis, tuberculosis, or other infectious or contagious diseases communicable to humans in any place where they may come in contact with cows or other milking animals;

(9) draw milk for human food from cows or other milking animals that are infected with tuberculosis, running sores, communicable diseases, or from animals that are fed feed that will produce milk that is adulterated;

(10) accept or process milk from any producer without verification that the producer holds a valid permit or certification or, if milk is accepted from out of the state, without verification that the producer holds a permit or certification from the appropriate regulatory agency of that state;

(11) use any contaminated or unclean equipment or container to process, manufacture, distribute, deliver, or sell a dairy product;

(12) remove, change, conceal, erase, or obliterate any mark or tag placed upon any equipment, tank, or container by the department except to clean and sanitize it;

(13) use any tank or container used for the transportation of milk or other dairy products that is unclean or contaminated;

(14) refuse to allow the department to take samples for testing;

(15) prohibit adding vitamin compounds in the processing of milk and dairy products in accordance with rules of the department; or

(16) own, operate, organize, or otherwise participate in a cow-share program where the milk producing hoofed mammal is located in Utah.

Amended by Chapter 165, 2007 General Session

Amended by Chapter 179, 2007 General Session

4-3-11. Processors, manufacturers, or distributors -- Unlawful to give money, equipment, or fixtures to retailer or consumer -- Exceptions -- Shelf space for dairy products.

(1) As used in this section:

(a) "liquid dairy product" means a milk container which contains a pint of milk or less; and

(b) "novelty ice cream" means a package or container of ice cream which contains eight fluid ounces or less.

(2) Except as provided in Subsections (3) and (4), no processor, manufacturer, distributor, or his affiliates, subsidiaries, associates, agents or stockholders shall furnish, service, repair, give, lease, sell, or loan to a retailer or consumer any:

(a) money;

(b) equipment;

(c) fixtures, including ice cream cabinets or bulk milk dispensers;

(d) supplies, excluding expendable supplies commonly provided in connection with the sale of dairy products to a consumer; or

- (e) other things having a real or substantial value.
- (3) (a) Ice cream cabinets may be loaned or sold to a retailer if the ice cream cabinet:
 - (i) is portable;
 - (ii) has a storage capacity not exceeding 12 cubic feet; and
 - (iii) is used solely for retail display sales of novelty ice cream.
- (b) Milk coolers may be loaned or sold to a retailer if the milk cooler:
 - (i) is portable;
 - (ii) has a storage capacity not exceeding 12 cubic feet; and
 - (iii) is used solely for retail display sales of liquid dairy products.
- (4) The leasing or renting of cabinets, dispensers, or coolers for dairy products for civic affairs, demonstrations, or exhibits is prohibited unless it is for a period of 10 days or less in any one period of three consecutive months.
- (5) (a) Except as provided in Subsections (5)(b) and (5)(c), no retailer shall lease, sell, or loan shelf or refrigerator space for dairy products to a processor, manufacturer, or distributor or receive anything of value from a processor, manufacturer, or distributor in exchange for shelf or refrigerator space for dairy products.
- (b) Subsection (5)(a) does not apply to a dairy by-product that is:
 - (i) a short-term special; or
 - (ii) a new product being introduced on a trial basis for a period not to exceed 45 days.
- (c) A processor, manufacturer, or distributor may loan or sell an ice cream cabinet or milk cooler to a retailer for the display of the processor's, manufacturer's, or distributor's products, if the ice cream cabinet or milk cooler meets the requirements of Subsection (3).

Amended by Chapter 87, 2001 General Session

4-3-12. Injunctions -- Bond not required -- Standing to maintain private action -- Damages authorized.

(1) The commissioner is authorized to apply to any court of competent jurisdiction for a temporary restraining order or injunction restraining any person from violating this chapter. No bond shall be required of the department in any proceeding brought under this subsection.

(2) In addition to penalties provided in this chapter, any person who suffers or is threatened with injury from any existing or threatened violation of Section 4-3-11 may commence an action in any court of competent jurisdiction for damages and, if proper, injunctive relief. Any organized and existing trade association, whether incorporated or not, is authorized to institute and prosecute a suit for injunctive relief and damages, as the real party in interest, on behalf of one or more of its members if the violation of Section 4-3-11 directly or indirectly affects a member.

Enacted by Chapter 2, 1979 General Session

4-3-13. Milk or milk products consumed by owner of farm exempt.

This chapter is inapplicable to milk or milk products produced on the farm if such

milk or milk products are consumed by the owner of the farm or members of such owner's immediate family.

Enacted by Chapter 2, 1979 General Session

4-3-14. Sale of raw milk -- Suspension of producer's permit -- Severability not permitted.

(1) As used in this section:

(a) "Batch" means all the milk emptied from one bulk tank and bottled in a single day.

(b) "Self-owned retail store" means a retail store:

(i) of which the producer owns at least 51% of the value of the real property and tangible personal property used in the operations of the retail store; or

(ii) for which the producer has the power to vote at least 51% of any class of voting shares or ownership interest in the business entity that operates the retail store.

(2) Raw milk may be manufactured, distributed, sold, delivered, held, stored, or offered for sale if:

(a) the producer obtains a permit from the department to produce milk under Subsection 4-3-8(5);

(b) the sale and delivery of the milk is made upon the premises where the milk is produced, except as provided by Subsection (3);

(c) the raw milk is sold to consumers for household use and not for resale;

(d) the raw milk is bottled or packaged under sanitary conditions and in sanitary containers on the premises where the raw milk is produced;

(e) the raw milk is labeled "raw milk" and meets the labeling requirements under 21 C.F.R. Parts 101 and 131 and rules established by the department;

(f) the raw milk is:

(i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being drawn from the animal;

(ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the animal; and

(iii) maintained at 41 degrees Fahrenheit or a lower temperature until the raw milk is delivered to the consumer;

(g) the bacterial count of the raw milk does not exceed 20,000 colony forming units per milliliter;

(h) the coliform count of the raw milk does not exceed 10 colony forming units per milliliter;

(i) the production of the raw milk conforms to departmental rules for the production of grade A milk;

(j) all dairy animals on the premises are:

(i) permanently and individually identifiable; and

(ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

(k) any person on the premises performing any work in connection with the production, bottling, handling, or sale of the raw milk is free from communicable disease.

(3) A producer may distribute, sell, deliver, hold, store, or offer for sale raw milk

at a self-owned retail store, which is properly staffed, if, in addition to the requirements of Subsection (2), the producer:

(a) transports the raw milk from the premises where the raw milk is produced to the self-owned retail store in a refrigerated truck where the raw milk is maintained at 41 degrees Fahrenheit or a lower temperature;

(b) retains ownership of the raw milk until it is sold to the final consumer, including transporting the raw milk from the premises where the raw milk is produced to the self-owned retail store without any:

- (i) intervening storage;
- (ii) change of ownership; or
- (iii) loss of physical control;

(c) stores the raw milk at 41 degrees Fahrenheit or a lower temperature in a display case equipped with a properly calibrated thermometer at the self-owned retail store;

(d) places a sign above the display case at the self-owned retail store that reads, "Raw Unpasteurized Milk";

(e) labels the raw milk with:

- (i) a date, no more than nine days after the raw milk is produced, by which the raw milk should be sold;
- (ii) the statement "Raw milk, no matter how carefully produced, may be unsafe.";
- (iii) handling instructions to preserve quality and avoid contamination or spoilage; and

(iv) any other information required by rule;

(f) refrains from offering the raw milk for sale until:

(i) the department or a third party certified by the department tests each batch of raw milk for standard plate count and coliform count; and

(ii) the test results meet the minimum standards established for those tests;

(g) (i) maintains a database of the raw milk sales; and

(ii) makes the database available to the Department of Health during the self-owned retail store's business hours for purposes of epidemiological investigation;

(h) refrains from offering any pasteurized milk at the self-owned retail store;

(i) ensures that the plant and retail store complies with Title 4, Chapter 5, Utah Wholesome Food Act, and the rules governing food establishments enacted under Section 4-5-9; and

(j) complies with all applicable rules adopted as authorized by this chapter.

(4) A person who conducts a test required by Subsection (3) shall send a copy of the test results to the department as soon as the test results are available.

(5) (a) The department shall adopt rules, as authorized by Section 4-3-2, governing the sale of raw milk at a self-owned retail store.

(b) The rules adopted by the department shall include rules regarding:

- (i) permits;
- (ii) building and premises requirements;
- (iii) sanitation and operating requirements, including bulk milk tanks requirements;
- (iv) additional tests;
- (v) frequency of inspections, including random cooler checks;

- (vi) recordkeeping; and
- (vii) packaging and labeling.
- (c) (i) The department shall establish and collect a fee for the tests and inspections required by this section and by rule in accordance with Section 63J-1-504.
- (ii) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce this section.
- (6) (a) The department shall suspend a permit issued under Section 4-3-8 if:
 - (i) two out of four consecutive samples or two samples in a 30-day period violate sample limits established under this section; or
 - (ii) a producer violates a provision of this section or a rule adopted as authorized by this section.
- (b) The department may reissue a permit that has been suspended under Subsection (6)(a) if the producer has complied with all of the requirements of this section and rules adopted as authorized by this section.
- (7) For 2014 and 2015, the Department of Health and the Department of Agriculture and Food shall report on or before November 30th to the Natural Resources, Agriculture, and Environment Interim Committee on any health problems resulting from the sale of raw whole milk at self-owned retail stores.
- (8) (a) If any subsection of this section or the application of any subsection to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of the section may not be given effect without the invalid subsection or application.
- (b) The provisions of this section may not be severed.

Amended by Chapter 167, 2013 General Session
Amended by Chapter 461, 2013 General Session